(a) whether there was any petition of appeal or revision from the order of the Director of Public Health directing the closure of the market soon after the said order;

(b) (1) who was the Diwan who disposed of that appeal petition;

(2) and how and (3) when was it disposed of?

Rama Varmha Tampuran.—(a) Yes.

(b) (1) The acting Diwan M. R. Ry. Rao Bahadur T. V. Kasturi Ranga Ayyar Avl.

(2) and (3) The appeal was dismissed on 3rd October 1932.

Appeal petition regarding Kuruvancheri arecanut Market.

614. Mr. P. Kumaran Ezhuthassan.—Will the Government be pleased to state:—

(a) whether there was any further revision petition on the order of the Diwan confirming the order of the Director of Public Health referred to in the above question;

(b) who was the Diwan who accepted the revision petition;

(c) who was the Diwan who heard the petition and disposed of the same;

(d) when was it heard and when was it disposed of;

(e) was the petition referred to the Government Advocate for his opinion and when;

(f) was any reminder sent to the Government Advocate to expedite his report; and if so, when;

(g) will the Government be pleased to place on the Council table the report of the Government Advocate on the subject?

Rama Varmha Tampuran.—(a) Yes.

(b) The permanent Diwan Mr. C. G. Herbert.

(c) The acting Diwan M. R. Ry. Rao Bahadur T. V. Kasturi Ranga Ayyar Avl.

(d) It was heard on 2nd November 1932 and disposed of on 7th February 1933.

(e) Yes. On 3rd November 1932.

(f) Yes. On 31st January 1933.

(g) Yes. A copy appended. (*Appendix XIII*).

Mr. P. Kumaran Ezhuthassan.—It is said that the petition was referred to the Government Advocate on the 3rd of November and a reminder was sent to him on the 31st of January. What was the hurry in getting this information from the G. A.?

Rama Varmha Tampuran.—There was no hurry. Reminders are always sent when reports are not received.

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Mr. P. Kumaran Ezhuthassan.—Were orders passed by the Acting Diwan subsequent to the receipt of the report of the G. A. ?

Rama Varmha Tampuran.—Orders of the Diwan were on the 7th February 1933. It is printed there; (d) gives the answer.

Mr. P. Kumaran Ezhuthassan.—Did not the petition contain a prayer that the petition may be disposed of by the permanent Diwan?

Rama Varmha Tampuran.—I do not remember that. Even if there is such a prayer, it will not be binding on the Government. Government gets papers and disposes them off.

Mr. P. Kumaran Ezhuthassan.—Is not this date the date on which the permanent Diwan took charge from the acting Diwan?

Rama Varmha Tampuran.—Taking charge was only in the afternoon; all the papers are generally returned in the morning. The practice is to send papers to the Diwan's house in the afternoon, after 5, and all these papers are returned early morning next day. This paper was also returned early morning. At the time the acting Diwan gave charge this paper was one of those that were disposed of.

Mr. P. Kumaran Ezhuthassan.—Can we take that the order was passed on the forenoon of that day ?

Rama Varmha Tampuran.—I think he passed orders generally between 7 and 9. It is one of those on which he passed orders alongwith the other urgent papers.

Mr. P Kumaran Ezhuthassan.—Was this passed on the forenoon of the day on which the acting Diwan handed over charge to the permanent Diwan?

Rama Varmha Tampuran.—It was passed in the early morning.

Mr. P. Kumaran Ezhuthassan.—Was it with a view to pass that order on that day that this reminder was addressed to the Government Advocate?

Rama Varmha Tampuran.—The reminder was not issued to pass that order on that day. It was sent in the usual course.

Mr. P. Kumaran Ezhuthassan.—Was a reminder sent earlier than that date ?

Rama Varmha Tampuran.—The rule is that reminders should be sent within 15 days.

Mr. P. Kumaran Ezhuthassan.—Prior to 3rd November was not a reminder sent to the G. A.?

Rama Varmha Tampuran.—I want notice as to how many reminders were sent.

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APPENDIX XIII.

(Vide Answer to Question No. 614).

Letter C. 204/1108, dated 2nd February 1933, from the Government Advocate and Law Officer.

Subject—Market—Kaumanchery—conduct of—refusal to grant license—complaint.

The right to set up a fair or market is in English law not a public but a prerogative right. It can only be granted by the Crown after a preliminary enquiry upon an 'Ad Quod Damnum.' A market, in English law, is thus a privilege within a town to hold a market. The King alone possesses the power of creating markets and fairs (Chitty, Prerogatives of the Crown, 193, citing 2-Co. Inst. 220). A franchise or market or fair carries with it a right to be protected from disturbance by a rival market or fair, levied within a distance of 7 miles (or more strictly, six and two-third miles of the place where the market or fair is held. If the rival market or fair is held on the same day and within the common law distance, disturbance and damage will be presumed. The application of the English law conception of markets to this State is the next question. It cannot be denied that this is a matter of some doubt. It has been held in the Calcutta cases referred to by the petitioner that 'the right to establish a market or hold a haut on land, though an incorporeal right and a franchise in England is when exercised upon one's own land, an ordinary right of property in India', subject of course to control by the proper authorities. The question cannot however be taken to be finally settled even as regards the Bengal Courts, for in the decision reported in 18 Calcutta 652, which was an analogous case of a monopoly right of ferry (the right to hold a ferry is like the right to hold a market a franchise in English Law). C. Kinealy and Ameer Ali JJ, held that a monopoly right of ferry may be conferred by a grant from the Government. The learned Editor of Upendra Nath Mitra's 'Law of Limitation and Prescription' points out in Vol. I, page 84, that the question respecting monopoly rights in markets and ferries has not yet been referred to a Full Bench in Calcutta. Obviously the matter has not been finally set at rest even in Bengal.

Even if it be taken for purposes of argument that the Calcutta High Court has decided once for all that there can be no such monopoly right in Bengal, it does not follow that there can be no such right in this State. The question in my opinion has to be viewed from a different angle so far as Native States are concerned. The Ruler of the Native State is the fountain head of all justice within the State and there is, so far as I can see, no good reason for doubting that the Government of this State alone possessed the power of creating markets and fairs and that the Government possesses the power of recognising ¾ such monopoly rights. There is therefore in my opinion no reason why the principles of English law should not be applied to this State so far as this matter is concerned. Taking it that the powers of Government in this respect have been delegated to the Municipal authorities, the action of the Municipal authorities in refusing to issue a license to hold a rival market, on the day on which the existing market is held, would be correct and justifiable.

There is also authority for the position that a Municipality has, as regards new private markets, absolute discretion to refuse to grant a license (17 Calcutta 329 and 20 Calcutta 654). Even taking it that the Municipality is bound to issue the license, subject to such Regulations as to supervision and inspection, etc., it seems to me that the Municipality would be perfectly justified in refusing permission to hold a new market on the same day, on grounds of inconvenience and difficulty in the matter of inspection

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and supervision which might be caused by the existence of two markets on the same day.

The enclosures are returned.

APPENDIX XIV (a).

(Vide Answer to Question No. 615).

Letter C. 7036/1104, dated 7th May 1932, from the Director of Public Instruction.

Board of Education—constitution of.

Reference.—*Official Memorandum, dated 15th February 1932, D—3—943 of 1106.*

Adverting to Official Memorandum, dated 15th February 1932, D—3—943 of 1106, I have the honour to submit that my detailed proposals for the constitution of a Board of Education will lose a great deal of their significance if presented in isolation from the general scheme of local self-Government in Education which forms part of my recommendation to be embodied in the report on the Educational Survey. My idea is that the new machinery of educational administration should be considered in its relation to and as issuing from the finding recorded by the Survey.

In another sense, however, the Survey cannot be complete without the functioning of the Board of Education and still more of the local education authorities whose creation forms one of my recommendations, because I have been gradually driven to the conclusion that some local body of educational intelligence is alone competent to pronounce an opinion on the educational needs of any locality and to estimate the adequacy of the existing provision of the education of the children of that locality. The creation of some kind of local education authority is an urgent necessity. The need for the present Educational Survey itself arose out of the unsatisfactory distribution of schools made by the department with insufficient knowledge of local conditions and in response to individual applications from intending school managers. My proposal for the creation of a Board of Education will lose a great deal of its significance unless we assume the existence of local educational authorities because I intend that a large proportion of the members of the Board should be drawn from local educational bodies. I may, therefore, be permitted to preface my proposals for the constitution of a board of education with a few words on the local Educational bodies themselves.

Expert opinion in Madras is sceptical as to the usefulness and even the practicability of local self-Government in education. Some of the educationists whom I consulted remarked that their experience of District Educational Councils in Madras had convinced them that decentralisation on the local self-governing plan was likely to fail. But the one essential point to be borne in mind—one which seems to have been largely lost sight of by the Madras authorities in constituting their District Educational Councils—is a clear idea as to what a lay local educational body is competent to deal with and what it is not. In the same way there are certain matters relating to Education which had better be left to such local bodies instead of being directly administered by the Education Department. For instance, a local self-Government organisation is in a better position to judge whether in a particular locality there is need for any more new schools or whether any old ones can be abolished with advantage. Fortunately we have already in existence of a number of Panchayats which may be made to form our starting point. At present there are 86 Panchayats including the two in Cranganur. These Panchayats in the different taluks may be grouped into Educational Districts and in each such district a local education authority called a School

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